

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Ameritech Operating Companies	)	WC Docket No. 02-319
Tariff FCC No. 2	)	
Transmittal No. 1312	)	
	)	
Nevada Bell Telephone Companies	)	
Tariff FCC No. 1	)	
Transmittal No. 20	)	
	)	
Pacific Bell Telephone Company	)	
FCC Tariff No. 1	)	
Transmittal No. 77	)	
	)	
Southern New England Telephone Companies	)	
Tariff FCC No. 39	)	
Transmittal No. 772	)	
	)	
Southwestern Bell Telephone Company	)	
FCC Tariff No. 73	)	
Transmittal No. 2906	)	

**OPPOSITION TO DIRECT CASE**

On August 2, 2002, incumbent local exchange companies (“ILECs”) owned by SBC Communications, Inc. (“SBC”) filed the above-referenced tariff revisions proposing additional security deposits and prepayments from certain interstate access customers (“carriers”)<sup>1</sup> whose creditworthiness is “impaired.” The Chief of the Pricing Policy

---

<sup>1</sup> SBC estimates that approximately 45 entities have monthly interstate access charge bills large enough to qualify for the proposed deposits. Of those, approximately 35 are carriers and less than ten are end-user customers. SBC Direct Case at 23. Therefore, the SBC interstate access customers at issue here will be referred to as “carriers.”

Division of the Wireline Competition Bureau (“WCB Chief”) suspended the tariff revisions on August 16, 2002.<sup>2</sup> By Order dated October 10, 2002 (“Order”),<sup>3</sup> the WCB Chief set forth numerous issues concerning the proposed tariff revisions and established a filing schedule for this proceeding. Pursuant to the Order, SBC filed its Direct Case in support of the tariff revisions on October 31, 2002.

As described in the Order, the policy of the Federal Communications Commission (“Commission”) regarding uncollectibles allows dominant ILECs to require security deposits from carriers that have a proven history of late payments to the ILEC or that have not established credit.<sup>4</sup> Provisions implementing this policy have become standard terms in interstate access tariffs.<sup>5</sup> Required deposits generally do not exceed two months’ charges.<sup>6</sup> In addition, the Commission requires 30 days’ notice of termination for nonpayment; 15 days is allowed if the carrier receives its bill within three days after the billing date.<sup>7</sup>

SBC’s proposed tariff revisions would significantly alter the practices discussed above. While maintaining the current deposit criteria, SBC also would expand its deposit requirements to include carriers whose creditworthiness is “impaired” and whose most recent interstate access bills – including outstanding balances – from *all* SBC companies

---

<sup>2</sup> *Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Companies, and Southwestern Bell Telephone Company*, Transmittal Nos. 1312, 20, 77, 772, and 2906, Tariffs FCC Nos. 2, 1, 1, 39, and 73, Order, DA 02-2039, 17 FCC Rcd. 15913 (2002).

<sup>3</sup> DA 02-2577.

<sup>4</sup> Order, ¶ 2, citing *Investigation of Access and Divestiture Related Tariffs*, Phase I Order, CC Docket No. 83-1145, 97 FCC2d 1082, 1169 (1984).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at n. 7.

<sup>7</sup> *Id.*, ¶ 2, citing *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-05 (1986) (“1987 Access Tariff Order”).

total \$1 million or more, regardless of the carrier's payment history with SBC.<sup>8</sup> A carrier's creditworthiness would be deemed to be impaired if any one of the following conditions exists:

- if any debt securities of a carrier or its parent are below investment grade, as defined by the Securities and Exchange Commission;
- if any debt securities of a carrier or its parent are rated the lowest investment grade by a nationally recognized credit rating organization and are put on review by the rating organization for a possible downgrade;
- if the carrier does not have outstanding securities rated by credit rating agencies, e.g., Standard and Poor's, and the carrier is rated (a) "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or (b) "high risk" in Paydex score as published by Dun and Bradstreet;
- if the carrier or its parent informs SBC or publicly states that it is unable to pay its debts; or
- if the carrier or its parent has commenced a voluntary receivership or bankruptcy proceeding or had one initiated against it.<sup>9</sup>

Carriers that have a history of late payments with SBC or that cannot establish credit could be required to pay a deposit equal to two months' charges, while credit impaired carriers may be required to pay a deposit or prepayment equal to one month's charges.<sup>10</sup> The deposit may be in cash or, at the carrier's option, in the form of a letter of credit upon which SBC may draw or a third-party guarantee.<sup>11</sup> SBC also proposes generally to shorten the time for refusal or discontinuance of service for nonpayment from 30 days to 15 days after notice, and to only ten days for carriers whose credit is impaired.<sup>12</sup>

---

<sup>8</sup> *Id.*, ¶ 5. The SBC companies – Ameritech, Nevada Bell, Pacific Bell, Southern New England Telephone and Southwestern Bell – are the primary ILECs in 13 states (Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, ¶ 6.

<sup>11</sup> See Ameritech Operating Companies, Transmittal No. 1312, at 3.

<sup>12</sup> See *id.* at 6.

Robert S. Tongren, in his capacity as the Ohio Consumers' Counsel, and the Texas Office of Public Utility Counsel (collectively referred to as "Consumer Advocates") hereby submit this Opposition in response to SBC's Direct Case.<sup>13</sup> Although the Consumer Advocates agree that ILECs should be allowed to protect themselves from carriers that are bad credit risks, SBC fails to justify the methods that it proposes. The revisions that SBC proposes would only hasten the exit of competitors from the market, thus decreasing consumers' choices and increasing the likelihood that consumers would lose their carrier of choice. Therefore, the Consumer Advocates recommend that the Commission reject SBC's proposals.

**I. SBC's Proposed Deposit Requirement Would Lead to Consumers Having Fewer Choices for Long Distance and Local Service.**

SBC argues that the tariff revisions are necessary because of "the current financial crisis in the telecommunications industry" and because existing security deposit provisions "fail to protect SBC in instances where a customer with prompt payment history suddenly ceases to pay its bill two or three months prior to filing for bankruptcy."<sup>14</sup> SBC claims that it is currently owed approximately \$420 million for services rendered, mostly by several of its largest customers.<sup>15</sup>

---

<sup>13</sup> Consumer Advocates are each individually authorized by their respective state statutes to represent the interests of utility consumers in their states before state and federal courts and agencies. See Ohio Rev. Code Ann. Chapter 4911 (Anderson 2001); Tex. Util. Code § 13.001 *et seq.* (Vernon Supp. 2002).

<sup>14</sup> SBC Direct Case at 2.

<sup>15</sup> *Id.* It should be noted that this represents only about 2.2% of SBC's voice wireline operating revenues (\$18.779 billion) – and 1.4% of SBC's total wireline revenues (\$29.167 billion) – for the first nine months of 2002. See SBC Third Quarter 2002 Investor Briefing (October 24, 2002) at 11. Such percentages do not constitute a substantial risk.

SBC does not argue, however, that any of those carriers are currently behind in any payments. Moreover, SBC does not indicate that any of the \$420 million is owed in arrears or how much of the amount may be in dispute. SBC bases its case solely on speculation by “financial experts” that the industry downturn will continue.<sup>16</sup>

In fact, the problem that SBC seeks to alleviate is one of potential risk:

SBC’s rates under price caps and current security deposit provisions do nothing to mitigate SBC’s risk of nonpayment from customers posing a significant risk of default, thereby leaving SBC continually exposed to *potential* revenue losses in the hundreds of millions of dollars.<sup>17</sup>

As noted in the Order, SBC proposes to “significantly alter the balance between SBC and its interstate access customers with respect to the risks of nonpayment of interstate access bills that was struck in the early 1980s when access charges were instituted.”<sup>18</sup> SBC is attempting to ensure that its risk in a competitive world is minimized, if not eliminated. It is seeking to do so on the backs of the very companies against whom it is competing.

SBC asserts that its proposal does nothing more than grant SBC the same protections accorded other suppliers, such as equipment vendors, in dealing with credit impaired carriers.<sup>19</sup> This analogy is misguided, however, because the relationship between SBC and most of the carriers that would be affected by the proposed tariff revisions is far different from the relationship between “other suppliers” and those carriers. If an equipment vendor, for example, refuses to sell products to a carrier, the carrier can usually go to another vendor.

---

<sup>16</sup> See *id.* at 1-2.

<sup>17</sup> *Id.* at 3 (emphasis added).

<sup>18</sup> Order, ¶ 14.

<sup>19</sup> See Ameritech Operating Companies, Transmittal No. 1312, at 2.

In contrast, the “product” that SBC provides carriers is access to SBC’s local exchange subscriber base. There is no other means for carriers to obtain this “product.” Thus, SBC is the only supplier for the one product essential to the carriers’ existence.

Moreover, in six of its 13 states, SBC is in direct competition with interexchange carriers (“IXCs”) to provide long distance service to SBC’s local exchange customers.<sup>20</sup> Thus, SBC’s credit policies have a direct effect on its long distance competitors, and at least an indirect effect on its local exchange competitors. SBC has noted the effect that bundling its local and long distance services can have on competition:

Long distance helps deliver improved winback results. In the SBC Southwestern Bell states, where the company is able to offer long distance combined with local service as its competitors do, third-quarter winback rates in both consumer and business markets were more than 50 percent. By far the most popular of SBC’s bundled options is interLATA long distance combined with local services.<sup>21</sup>

By limiting other IXCs’ ability to serve long distance customers, SBC also may hamper those IXCs’ efforts to offer bundled local and long distance packages. Competition in the local and long distance markets would be harmed.

In reality, end-use consumers, especially residential consumers, would be harmed most, through decreased choices for long distance *and* local service. SBC has already become a major long distance player in the six states in which it offers interLATA

---

<sup>20</sup> SBC has been authorized to provide interLATA service in the five Southwestern Bell states and Connecticut, which combined have 19 million local access lines. See SBC Third Quarter 2002 Investor Briefing (October 24, 2002) at 5. The Department of Justice recently recommended that SBC be allowed to provide interLATA service in California, which has approximately 20 million local access lines. See *In the Matter of Application by SBC Communications, Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in the State of California*, WC Docket No. 02-306, Evaluation of the United States Department of Justice, filed October 29, 2002, at 6.

<sup>21</sup> See SBC Third Quarter 2002 Investor Briefing, *supra*, at 5.

service, garnering a 31% market share.<sup>22</sup> SBC also continues to dominate the local exchange market in its service territory with at least 84% of the total market in each state.<sup>23</sup> SBC's dominance of the residential local exchange market is even greater. If carriers are no longer able to compete effectively with SBC – in either the long distance or the local market – due to the company's deposit requirements, their customers will naturally migrate back to SBC for both local and long distance service.<sup>24</sup> Ultimately, the re-entrenchment of SBC in the local service market and its emergence as a dominant toll provider would mean that consumers, especially residential consumers, in the SBC states would lose the few competitive benefits they have realized from the Telecommunications Act of 1996 ("1996 Act").<sup>25</sup>

SBC does not identify the "approximately 35" carriers that would be immediately affected by the proposed tariff revisions. Although the proposal would affect less than four percent of carriers, these carriers also generate more than 94% of SBC's interstate access revenues.<sup>26</sup> Thus, they are the largest carriers – the carriers with the resources to compete against SBC in both the local exchange and long distance markets.

---

<sup>22</sup> According to SBC, it has 5.9 million long distance customers in the five Southwestern Bell states and Connecticut. *Id.* These states combined have 19 million access lines. See note 20, *supra*.

<sup>23</sup> See "Local Telephone Competition: Status as of December 31, 2001," Industry Analysis Division, Common Carrier Bureau (July 2002), Table 6. Although the Table does not differentiate between SBC and non-SBC LECs in the states served by SBC, because SBC is the primary LEC in each state, the data is reflective of SBC's dominance.

<sup>24</sup> For example, after the WorldCom collapse, SBC in Missouri noted a 25% increase in calls from customers who were seeking to switch providers. See "Duke gets bargain, Savvis residuals from WorldCom," St. Louis Business Journal, July 5, 2002 print edition (available at [www.bizjournals.com/industries/high\\_tech/telecom/2002/07/08/stlouis\\_story6.html](http://www.bizjournals.com/industries/high_tech/telecom/2002/07/08/stlouis_story6.html), accessed July 11, 2002).

<sup>25</sup> P.L. 104-104, 110 Stat. 56.

<sup>26</sup> See SBC Direct Case at 23, Table 8.

Indeed, in the past three years such carriers have helped develop the residential local exchange competition envisioned in the 1996 Act. AT&T, for example, was one of the early competitors to Verizon for residential service. AT&T and MCI have just begun to expand into areas where residential local service competition has been slow to develop.<sup>27</sup>

On the other hand, these companies are in a competitive market for both local and long distance. They do not have the type of dominance – or even monopoly power – that SBC maintains over local service in many areas. For these companies, having to pay millions of dollars in deposits or prepayments, or having their lines of credit sapped by SBC, could adversely affect their ability to enter or remain in the market. Consumers would lose the carrier of their choice, or at least their ability to choose a carrier other than SBC.

Residential consumers have waited too long for the seed of local competition to begin to sprout. SBC's proposed revisions to its interstate access tariffs would jeopardize the development of local competition by impeding the ability of competitive carriers to bundle local and long distance services. The Commission must avoid this consequence by rejecting SBC's proposals.

## **II. Shorter Disconnection Times Would Unduly Burden Consumers.**

SBC does not justify shortening the time for disconnection. Shorter notice to carriers means that their customers will likely receive minimal or no notice that their

---

<sup>27</sup> See, e.g., "AT&T enters Ohio residential local phone market; Offers early subscribers special savings," AT&T News Release (June 11, 2002) (available at [www.att.com/news/item/0,1847,10545,00.html](http://www.att.com/news/item/0,1847,10545,00.html), accessed November 14, 2002).



service will be terminated, even though the customers are not in arrears with their carrier. SBC proposes to terminate a carrier's service ten or 15 days after the carrier fails to pay its bill on time or eleven days after the carrier fails to pay a deposit or a prepayment.<sup>28</sup> Obviously, the carrier will spend its ten to 15 days negotiating with SBC over its bill rather than informing its customers about the possibility of imminent disconnection. There are few carriers that would admit to customers that the service the customers receive is about to be terminated through no fault of their own.

Even if the about-to-be-disconnected carrier were to notify its customers immediately, the customers will likely have less than seven days after receiving the notice to find a new carrier in order to avoid disruption of service. This is considerably less than the 30 days' notice given customers where a carrier voluntarily discontinues service.<sup>29</sup>

In addition, SBC proposes to cease processing orders from a carrier ten or 15 days after the carrier fails to pay its bill on time or eleven days after the carrier fails to pay a deposit or a prepayment.<sup>30</sup> While the carrier will be notified that new orders will no longer be processed, there is no guarantee that consumers placing orders with the carrier will be notified that their orders will not be processed. Thus, the consumers may be unaware for months that their service is not being provided by the carrier of their choice. Such confusion, caused by a lack of communication, is a cause for many complaints filed at the FCC and state commissions against ILECs, competitive local exchange carriers and IXC.

---

<sup>28</sup> See Order, ¶ 7.

<sup>29</sup> See 47 C.F.R. § 63.71.

<sup>30</sup> See Order, ¶ 7.

The Commission has recognized that “[e]ven customers with competitive alternatives need fair notice and information to choose a substitute service.”<sup>31</sup> The standard for such notice as set forth in 47 C.F.R. § 63.71 – and reinforced in the *1987 Access Tariff Order* – is 30 days. SBC’s proposal would cut that time frame in half, or worse, and thus unduly burden carriers’ customers. The Commission should reject the proposal.

### **III. SBC’s Direct Case Does Not Establish a Need for the Proposed Tariff Revisions.**

In evaluating SBC’s Direct Case, the Commission should not consider SBC’s potential risk, but rather the actual risk for lost revenues that SBC faces. That risk is illustrated by SBC’s uncollectibles. Table 2 of the Direct Case sets forth SBC’s total booked uncollectibles from 1990 through August 2002.<sup>32</sup> The data shows that for the first eight months of 2002, SBC’s actual uncollectibles totaled \$227.338 million. SBC notes that the level of uncollectibles has more than doubled since 2001 and concludes that the increase “does not constitute a normal fluctuation, but rather an unprecedented trend in the telecommunications industry.”<sup>33</sup>

Table 2 actually shows that SBC has prematurely declared its current uncollectibles situation as a “trend.” Throughout the 1990s, the uncollectibles for the ILECs that are now part of SBC remained fairly steady, ranging from a low of \$16.554 million in 1995 to a high of \$26.896 million in 1996. Large percentage increases in the

---

<sup>31</sup> *In the Matter of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, Report and Order, 14 FCC Rcd 11364 (1999), ¶ 30.

<sup>32</sup> SBC Direct Case at 6.

<sup>33</sup> *Id.* at 7.

Southwestern Bell region during the next two years caused SBC's uncollectibles to top \$30 million in 2000 and \$48 million in 2001. The current year is the first that SBC has had a significant percentage increase in uncollectibles. Thus, it is too soon to label the situation as a "trend," let alone an "unprecedented" one.

Moreover, until this year increases in SBC's uncollectibles have not been company-wide. Table 2 shows that from 1999 through 2001, the Southwestern Bell region accounted for 50% to 74% of SBC's uncollectibles. This year, four of the five SBC regions have seen steep percentage increases in uncollectibles. However, 46% of SBC's uncollectibles in 2002 come from one region – Ameritech. In 2001, Ameritech's uncollectibles were well below the uncollectible amount embedded in its price cap rates,<sup>34</sup> but experienced a nearly 30-fold increase during the first eight months of 2002. This would appear to be an anomaly rather than a "trend."

In any event, SBC's ratio of uncollectibles to operating revenues for the first two quarters of 2002 does not appear to put SBC at substantial risk. According to Tables 3 and 4, SBC's total amount booked to uncollectibles for wholesale and retail operations (not including the Southern New England Telephone region) through July 2002 was \$262,308,293.<sup>35</sup> This figure includes uncollectibles for local and interconnection, as well as interstate access, services.<sup>36</sup> For the first two quarters of 2002, SBC's total wireline operating revenues were \$19.518 billion and voice wireline operating revenues were \$12.621 billion.<sup>37</sup> Thus, for the first half of 2002 SBC's uncollectibles were only 1.3% of

---

<sup>34</sup> *Id.* at 6, Table 1.

<sup>35</sup> See *id.* at 9.

<sup>36</sup> *Id.*

<sup>37</sup> See SBC Second Quarter Investor Report (August 13, 2002) at 12.

its total wireline operating revenues and 2.1% of its voice wireline operating revenues.<sup>38</sup>

This is not overly burdensome on SBC, especially given the fact that SBC's interstate rate of return for 2001 was 22.36%, according to SBC's 2001 ARMIS report.

In addition, SBC fails to prove the predictive value of the financial ratings services as a basis for assessing creditworthiness. There is no evidence that the rankings as applied to the carriers have any demonstrated correlation to the likelihood of the carriers paying bills in full and on time. Such financial ranking services were not created for that purpose, nor do the providers of such rankings make such a claim. Indeed, some of the ratings services' reports contain explanatory notes or disclaimers that set forth limitations on the credit information provided in the reports. Thus, a report on a carrier by a financial ranking service may not be a valid predictor of the carrier's ability to pay.

When put in perspective, it is clear that SBC's situation is not as dire as SBC would like the Commission to believe. SBC has failed to show a need for the proposed tariff revisions.

#### **IV. Conclusion**

SBC's asserted need to mitigate potential risk, and its proposal to do so, would have a serious adverse affect on carriers, and especially their customers. SBC has not demonstrated that its proposed tariff revisions are necessary, or that its goal of risk mitigation could not be accomplished through less-intrusive means. The Commission should reject SBC's proposal.

---

<sup>38</sup> Because the revenue data is for the six months ending June 30, 2002, the actual percentage is probably slightly lower.

Respectfully submitted,

ROBERT S. TONGREN  
CONSUMERS' COUNSEL

/S/ Terry L. Etter

Terry L. Etter  
David C. Bergmann  
Assistant Consumers' Counsel  
**Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
(614) 466-8574  
FAX (614) 466-9475  
etter@occ.state.oh.us

Suzi Ray McClellan  
Public Counsel  
State Bar No. 16607620  
Laurie Pappas  
Deputy Public Counsel  
Texas State Bar No. 12128690  
**Texas Office of Public Utility Counsel**  
1701 N. Congress Avenue, Suite 9-180  
P.O. Box 12397  
Austin, Texas 78711-2397  
(512) 936-7500  
(512) 936-7520 (Facsimile)

November 14, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Opposition to Direct Case was served by first-class mail, postage prepaid, to the parties of record identified below, on this 14<sup>th</sup> day of November 2002.

/S/ Terry L. Etter  
\_\_\_\_\_  
Terry L. Etter  
Assistant Consumers' Counsel

Davida M. Grant  
Jeffrey A. Brueggeman  
Gary L. Phillips  
SBC Communications, Inc.  
1401 I Street, N.W.  
Suite 400  
Washington, D.C. 20005